IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5997 of 1988
With
SPECIAL CIVIL APPLICATION No. 5998 of 1988
With
SPECIAL CIVIL APPLICATION No. 6308 of 1988

For Approval and Signature:

HONOURABLE MR.JUSTICE KSHITIJ R.VYAS

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHEKHA HARI & 51 - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR TM BAROT for MR MC BAROT for Petitioner(s) : 1 – 52 [S.C.A. No.5997/88
MR SP HASURKAR A.G.P. for Respondent(s) : 1 – 3.

MR TM BAROT for MR MC BAROT for Petitioner(s) : 1 – 9 [S.C.A. No.5998/88
MR SP HASURKAR A.G.P. for Respondent(s) : 1 – 3.

MR DIVYESH NIMAVAT for Petitioner(s) : 1 – 13 [S.C.A. No.6308/88].
MR SP HASURKAR A.G.P. for Respondent(s) : 1 – 3.

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CORAM : HONOURABLE MR.JUSTICE KSHITIJ R.VYAS
and
HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 02/02/2006

ORAL COMMON JUDGMENT

(Per : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA)

1. In this group of three petitions same questions of fact as well as law are involved and, therefore, they have been heard together and now they are being disposed of by this common judgment. All the petitioners are the employees of the irrigation department of the Government of Gujarat. In Special Civil Application No. 5997 of 1988 there are 52 petitioners, in Special Civil Application No.5998 of 1988 there are 9 petitioners and in Special Civil Application No. 6308 of 1988, there are 13 petitioners. In all, there are 74 petitioners in these three petitions. Their common grievance is that though they have worked as labourers/chowkidars at different places since 1983-84, now they have been sought to be reverted from chowkidars to daily wagers. Their say is that up to 1983-84 they were working on daily wage basis as chowkidars, but after completion of more than 10 years service they have been performing duties as chowkidar at different places as worked charged employees. It is their say that now the respondents cannot revert them as daily wagers. They have, therefore, prayed that the direction/ order of reversion passed by respondent no. 2 be quashed and set aside. The respondents have contested the petition by filing affidavit-in-reply. Their only say is that since the projects under which they were employed as work charged employees are over and now there is no work available for them as work charged employees and, therefore, the respondents are justified in reverting them as daily wagers.

2. We have heard Mr. T.M. Barot learned advocate appearing for the petitioners in Special Civil Applications No. 5997 of 1988 and 5998 of 1988, Mr. Divyesh Nimavat learned advocate appearing for the petitioners in Special Civil Application No. 6308 of 1988 and Mr. S.P. Hasurkar learned A.G.P., appearing for the respondents in all the petitions. The learned advocates for the petitioners have submitted that this is a glaring case of discrimination practiced by the respondents against the petitioners. In their submissions, many persons

who were similarly situated and working on the work charged establishment like the present petitioners, have retired. They have also pointed out that now even from the petitioners in the present petitions, some of them have retired and they are being paid pension either on *ad-hoc* basis or regular basis and as such they have been given all the benefits which are available to work charged employees. If the petitioners are reverted they will not get such benefits. As against that Mr. Hasurkar has submitted that when the work meant for work charged employees is already over, the petitioners cannot claim any lien on the post and insist that they should be given a particular work only as work charged employees. He has submitted that there is a difference between the work charged establishment and the daily wager establishment and hence when the regular work in the former category is not available they have to be reverted as daily wagers. In support of his submission he has cited certain decisions which will be discussed in this judgment little later.

3. Having carefully considered the contents of the petitions and the documents annexed thereto and having also given careful consideration to the submissions of the learned advocates, it clearly appears to us that the petitioners have been working with the irrigation department at different places for more than last 25 years by now. It is their say that till 1983, they were working as daily wagers and as a daily wager also they have put in about 10 years service. Thereafter, they were taken on the work charged establishment. Even on that establishment they had worked for a considerable period and in the year 1988 their services were sought to be reverted to daily wager. We have also perused the present day position of all the petitioners and as stated earlier many of them have retired or even have expired. But either they or their families have been receiving pension. These petitions are of the year 1988. At the time, the notice was issued, pending admission, this Court on 2nd August, 1988 had passed the

following order.

> "Notice returnable on 12th September, 1988. Ad-interim relief to maintain status quo as the petitioners agree that if the interim relief is not confirmed, they will not claim wages for the interim period. D.S., permitted today."

3.1. Thereafter on 9th April, 1991, this Court issued rule and confirmed ad-interim relief granted earlier and directed the respondents to file reply on or before 31st July, 1991. In fact the said order is required to be reproduced verbatim which is as under:

> "The petitioners are directed to comply with the office objection latest by April 15, 1991. Only after the office objections are removed, notice of rule shall be issued.
> Rule. To be heard with Special Civil Application No. 6308 of 1988. Ad-interim relief granted earlier is ordered to confirm till further orders. Respondents are directed to file affidavit-in-reply latest by July 31, 1991. Thereafter it will be open to either side to request the Court for fixed date of hearing."

3.2. Thus, it can be seen that even at that stage this Court had directed the respondents to file affidavit-in-reply latest by 31st July, 1991 and thereafter liberty was granted to the either side to request the Court for fixing date of final hearing. It appears that during the said time-limit no reply was filed. In fact it appears though it was prepared on 26th October, 1993, but it has been tendered to the Court very recently i.e., on 2nd February, 2006. The endorsement shows that it has been served on the petitioners on 27th January, 2006. It also appears from the record that no attempt was ever made to get the interim relief vacated and/or to get the date of final hearing fixed. With the result, the petitioners have been working on the work charged establishment right from the year 1982-83

till this date. Of course, after year 1988, they have been continued on the work charged establishment by virtue of the Court's order. However, as stated above, this Court had granted ample opportunity to the respondents to get the matter fixed for final hearing or if that was not possible, to get the interim relief vacated. Nothing seems to have been done on either count. When these are the facts and when the petitioners have been working on the work charged establishment for the last 25 years, there is no justifying reason for the respondents to now revert them to daily wagers and to take work from them in that capacity. It is the submission of Mr. Hasurkar that when the irrigation projects for which they were employed are over long back, they cannot be given any other work on the establishment of the work charged. The Government will, therefore, have to pay idle wages to them. This submission of Mr. Hasurkar does not impress us at all. Had that been the position and had the Government been feeling concerned about the payment of idle wages, it would have immediately reacted to the situation and would have approached this Court for either getting the matter finally disposed of or at least getting the interim relief vacated. When that has not happened, it is very safe for us to presume that they have been given the same or similar work. It is difficult to imagine that for 25 years the Government would have been paying idle wages. If that is the reality, the concerned Government Officers should be taken to task for not taking appropriate steps to avoid such situation. Be that as it may, the position even today is that the petitioners who are still in service are working on the work charged establishment. Those who have retired are receiving pensionary benefits and those who have expired, their families have been receiving family pension. The record shows that in one case even compassionate appointment has been given to the son of the deceased employee. These are the benefits which are available to the work charged employees. When number of such persons who are similarly situated like the petitioners have been afforded all

these benefits, the respondents cannot discriminate the petitioners and revert them to a position of daily wagers and cause them disadvantage. It will be nothing but hostile discrimination. Considering the peculiar circumstances of this case, especially when the petitioners have been working as work charged employees for the last 25 years and also some of them are now on the verge of retirement. The Government would not be justified in putting them in disadvantageous position. The Apex Court in a decision rendered in the case of **Gujarat Agricultural University v. Rathod Labhu Bechar & Ors., reported in (2001) 3 SCC pg.574,** has considered similar problem. The question regarding regularization of the daily rated labourers was under consideration. In that case, the concerned labourers were working as daily rated labourers for over 10 years and their case for regularization were not considered. In fact they were engaged as daily rated labourers *dehors* the rules, even then, the Apex Court directed that a special scheme be framed to absorb them on regular establishment by relaxing the qualifications and creating number of posts. In the present case, the petitioners are on far better footing than the daily rated labourers of the case before the Apex Court. There is no allegation that they have received back door entry in the employment. In the present case they have been working on work charged establishment for 25 years and many of them have retired and even after their retirement they have been receiving pensionary benefits which are not available to the daily wagers, The petitioners, therefore, need little better treatment than the beneficiaries of the decision before the Apex Court.

4. It is submitted by Mr. Hasurkar that in the event of the petitioners being continued as work charged employees, there will be additional burden on the Government exchequer. This submission also cannot be accepted. On such ground, the benefits available to the petitioners cannot be denied. We are

supported with the decision rendered by the Apex Court in the case of **Chief Conservator of Forests v. Jagannath Maruti Kondhare reported in A.I.R. 1996 SC pg.2898** wherein, it is held that relief of regularization with all benefits of permanent worker cannot be refused on grounds of financial strain on the State exchequer. In another case namely, **C.E. Tuticorin Thermal Power Station v. Inspector of Labour, Tuticorin & Ors., reported in 2002 A.I.R. SCW 2780,** directions have been given by the Apex Court to appoint daily wager as permanent workers. When this is the position of law, this is a fit case wherein the benefits made available by the Apex Court to different categories of the employees should be made available to the petitioners. Even if in the irrigation department at a particular site the project work is over the petitioners can be absorbed somewhere else by the respondents where the work is available. The petitioners cannot refuse to go there and join duty because in their appointment letters, one of the conditions that has been prescribed is that they will be required to be posted at any place for performance of their duty. In fact, it is orally assured by the learned advocates for the petitioners to us that whatever work that will be assigned to them, it will be carried out by the petitioners and that too at the places indicated by the respondents. We, therefore, direct the petitioners to file an undertaking in these petitions on or before 3rd March, 2006 failing which, the respondents will be at liberty to execute the order of reversion against such petitioners. Thus, the said undertaking will take care of Mr. Hasurkar's submission that there is no work available in the work charged establishment and the petitioners will not sit idle. The fact remains that the petitioners have been working for 25 years in the said establishment and as stated above, they will not be sitting idle, but they must be carrying out some work or other, which may not be a prescribed work for the employees of the work charged category. Therefore, now it is for the respondents to keep them busy.

5. We have also perused the decisions cited by Mr. Hasurkar. He has placed reliance on the decision rendered by the Apex Court in the case of **State of Rajasthan v. Kunji Raman reported in (1997) 2 SCC pg. 517**. We have perused it carefully. This decision has no relevance with the present case. In this decision only the difference between the work-charged establishment and regular establishment has been determined by the Apex Court. There is no dispute on that count in these petitions. The only question that is to be considered is whether after such a long period the petitioners should be reverted as daily wagers. The present decision does not deal with such problem. The other decisions are also on the same aspect and, therefore, we do not propose to consider the same. Before parting with the judgment we may make it very clear that this decision has been rendered by us keeping in view the peculiar facts of this case and it cannot be served as binding precedent in other cases.

6. In view of the aforesaid, these petitions are allowed. The impugned orders dated 31st August, 1988, 1st September, 1988, and 6th September, 1988 reverting the petitioners from work charged employees to daily wagers, are quashed and set aside. The respondents are directed to treat the petitioners as work charged employees. However, it will be open for the respondents to post them at any place and to provide them similar work or other than the work the petitioners were performing as chowkidars. Rule is made absolute to the aforesaid extent with no order as to costs.

[Kshitij R. Vyas, J.]

[Akshay H. Mehta, J.]

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